STATE OF MICHIGAN

COURT OF APPEALS

KARTER LANDON, Petitioner-Appellant,	UNPUBLISHED May 24, 2012
v	No. 301986 Tax Tribunal
TOWNSHIP OF MT. MORRIS, Respondent-Appellee.	LC No. 00-339817

Before: FITZGERALD, P.J., and MURRAY and GLEICHER, JJ.

PER CURIAM.

Petitioner Karter Landon owned residential property in Mt. Morris Township, which he used as a rental unit. Landon challenged the Township's assessment for taxation purposes of his property's true cash value (TCV), claiming that the condition of the home and neighborhood reduced the property's value. Calculating the cost of the property less depreciation of the home, the Michigan Tax Tribunal (MTT) assigned a property value consistent with the Township's original assessment. We vacate the MTT's opinion and order in relation to the 2007 assessment as the Township conceded below that the assessed value was too high. As Landon failed to meet his burden of proof in relation to the 2008 and 2009 property assessments, we otherwise affirm the MTT's judgment.

I. BACKGROUND

Landon is the sole shareholder of Bossman Investments, Inc., a corporation through which he purchases real estate to use as rental properties. Landon purchased 1096 N. Cornell in Mt. Morris Township on October 11, 2006, for $6,000 in cash. Landon purchased the property from a bank owner, which had previously purchased the property at a sheriff's sale.

In 2007, the Township assessor calculated the TCV of the property at $39,400. Landon protested the valuation to the Township Board of Review (BOR),[1] which affirmed the

[1] Pursuant to MCL 211.30(4):

> At the request of a person who property is assessed on the assessment roll or of his or her agent, and if sufficient cause is shown, the [BOR] shall correct the

assessment and, pursuant to MCL 211.27a, determined the state equalized value (SEV) and the taxable value (TV) to be $19,700.[2] The Township levied property taxes on the $19,700 figure. In 2008, the Township calculated the property's TCV as $21,000 and the SEV/TV as $10,500. In 2009, the TCV was $15,800 and the SEV/TV was $7,900.

Landon claimed that the property's TCV was much less than that calculated by the Township assessor and BOR. He claimed the home was in deplorable condition and sat in a neighborhood full of abandoned houses subject to vandalism and crime. Landon appealed to the MTT Small Claims Division. Before a referee, Landon presented a "sales-comparison analysis" using nine allegedly comparable properties. Landon determined that the average sales price for comparable homes was $7,000 in 2007, $5,700 in 2008, and $2,200 in 2009. Landon's comparable properties included three bank-owned homes that were offered for sale under $10,000 with one selling for only $2,500, a home that sold on a land contract for $9,500, and two properties that were subject to government foreclosure, selling for only $9,000 and $2,000.

The Township submitted a competing sales-comparison analysis, showing that three allegedly comparable properties had sold in private sales in 2006 for between $34,000 and $36,000. Based on those figures, the Township calculated that the TCV of Landon's property should have been $35,000 in 2006 and 2007 and $26,300 in 2008. Instead of presenting solid evidence to rebut the Township's comparable properties, Landon embarked on a rant based on

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> assessed value or tentative [TV] of the property in a manner that will make the valuation of the property relatively just and proper under this act.

[2] Pursuant to MCL 211.27a, a property is not assessed taxes based on its TCV:

> (1) Except as otherwise provided in this section, property shall be assessed at 50% of its [TCV] under section 3 of article IX of the state constitution of 1963. [This is the SEV.]
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> (2) Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the [TV] of each parcel of property is the lesser of the following:
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> (a) The property's [TV] in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's [TV] in the immediately preceding year is the property's [SEV] in 1994.
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> (b) The property's current [SEV].
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> (3) Upon a transfer of ownership of property after 1994, the property's [TV] for the calendar year following the year of the transfer is the property's [SEV] for the calendar year following the transfer.

his personal beliefs that the buyers in the Township's scenarios were uneducated about the market and overpaid for the selected properties.[3]

The case proceeded before hearing referee Thomas E. Woods. Woods rejected the applicability of Landon's evidence as follows:

> [Landon's] comparable properties were all foreclosure sales, as was the subject property, and his comps were not adjusted to the subject property. Because the comps were not exposed to the market in the usual manner and the seller was motivated to dispose of the property quickly for a price that may have been below market, we were not persuaded by [Landon's] evidence of market value.

The hearing referee acknowledged Landon's challenges to the Township's comparable property analysis, but discounted his unsupported claims. Even so, the referee determined that two of the Township's proffered properties were not sufficiently similar as they were in better condition and included more updates than Landon's property. Based on the evidence, the referee recommended that a judgment be entered affirming the Township's assessments for 2008 and 2009, but reducing the 2007 assessment to a $21,000 TCV and $10,500 SEV/TV.

Landon objected to the referee's assessment and the case proceeded before administrative law judge (ALJ) Victoria Enyart. In relation to Landon's comparable properties, the ALJ found:

> Most of the comparables utilized by [Landon] were foreclosure or distressed sales. Although foreclosures, bank sales, sheriff sales, etc. can be considered in the valuation of property, [Landon] failed to properly demonstrate that the sales he offered in support of his contentions were subject to normal market pressures. Further, the record lacks any information regarding competing offers or typical motivations.

Despite that the Township conceded before the MTT that its 2007 appraisal should have been reduced to $35,000, the ALJ reinstated the Township's original 2007 assessment of $39,400.

Landon filed a motion for reconsideration, which the ALJ granted. The ALJ reaffirmed her assessment, but conceded that she had not fully explained her analysis in the original

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[3] Landon's challenge was based on a sound premise:

> The common denominator or the basis for equalization is market value: that price which an *informed and intelligent person, fully aware of the existence of competing properties* and not being compelled to act, is justified in paying for a particular property. [3 Mich State Tax Comm Assessor's Manual, p 7-1 (emphasis added).]

However, Landon presented no facts beyond his personal opinion to support his challenge.

judgment. The ALJ added: "The cost less depreciation approach to valuation, used to develop the original assessments for the tax years at issue, is widely accepted as one of the three viewpoints, which are refereed [sic] to as the approaches to value." The ALJ found that the Township's selected properties were not sufficiently comparable to conduct a sales-comparison analysis. Yet, the Township's original valuation of the property was consistent with its condition—"just above the line of habitability"—and the fact that the property was actually listed as a rental unit.

II. STANDARD OF REVIEW

Absent an allegation of fraud, we review an MTT decision "for misapplication of the law or adoption of a wrong principle." *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 76; 780 NW2d 753 (2010). We must accept the MTT's factual findings as conclusive if supported by "competent, material, and substantial evidence on the whole record." *Id*. (quotation marks and citation omitted). "Substantial evidence is the amount of evidence that a reasonable person would accept as being sufficient to support a conclusion; it may be substantially less than a preponderance of the evidence." *Wayne Co v Mich State Tax Comm*, 261 Mich App 174, 186-187; 682 NW2d 100 (2004).

We review underlying issues of statutory interpretation de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Our ultimate goal is to discern the intent of the Legislature based on the statute's language. *Dimmitt & Owens Fin, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618, 624; 752 NW2d 37 (2008). "When the language of a statute is unambiguous, the Legislature's intent is clear, and judicial construction is neither necessary nor permitted." *Id*. When the statutory language allows for alternative reasonable interpretations, however, we must employ the tools of statutory construction to accomplish the legislative purpose. *Chop v Zielinski*, 244 Mich App 677, 680; 624 NW2d 539 (2001).

III. ANALYSIS

On appeal, Landon continues to challenge the TCV as assessed by the Township and BOR. TCV is defined in the general property tax act, MCL 211.1 *et seq.*, as follows:

> As used in this act, "true cash value" means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. The usual selling price may include sales at public auction held by a nongovernmental agency or person if those sales have become a common method of acquisition in the jurisdiction for the class of property being valued. The usual selling price does not include sales at public auction if the sale is part of a liquidation of the seller's assets in a bankruptcy proceeding or if the seller is unable to use common marketing technique to obtain the usual selling price for the property. . . . [MCL 211.27(1).]

"'[TCV] is synonymous with 'fair market value.'" *Huron Ridge LP v Ypsilanti Twp*, 275 Mich App 23, 28; 737 NW2d 187 (2007). The assessed TCV must "reflect the probable price that a

willing buyer and a willing seller would arrive at through arm's length negotiation." *Id.* The *petitioner,* not the taxing authority, bears the burden of establishing the property's TCV. MCL 205.737(3).

"The [MTT] is under a duty to apply its expertise to the facts of a case to determine the appropriate method of arriving at the [TCV] of property, utilizing an approach that provides the most accurate valuation under the circumstances." *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992). "The three most common approaches to valuation are the capitalization-of-income approach, the sales-comparison or market approach, and the cost-less-depreciation approach." *Id*. "[V]ariations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to fair market value." *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 390; 576 NW2d 667 (1998). In determining "the most accurate valuation under the individual circumstances of the case," the MTT is "not bound to accept" either party's valuation theory and must make an "independent determination of [TCV]." *Id*. at 389-390, 399. Determining a property's TCV "is not an exact science;" it involves many judgment calls and "reasonable approximation." *Id.* at 398.

Landon used a sales-comparison approach to calculate the property's TCV, and the Township followed suit in rebutting Landon's evidence. The sales-comparison method

> requir[es] an analysis of recent sales of similar properties, a comparison of the sales with the subject property and adjustments to the sales prices of the comparable properties to reflect differences between the properties . . . . It has been described as the only approach that directly reflects the balance of supply and demand for property in marketplace trading. [*Id.* at 391 (citations omitted).]

The MTT, on the hand, used the cost-less-depreciation model. This was the valuation method employed by the Township and the BOR when originally assessing the property.

> "Under the cost approach, [TCV] is derived by adding the estimated land value to an estimate of the current cost of reproducing or replacing improvements and then deducting the loss in value from depreciation in structures, i.e., physical deterioration and functional or economic obsolescence." *Meadowlanes* [*Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 484 n 18; 473 NW2d 636 (1991).]
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> In *Meijer, Inc v City of Midland*, 240 Mich App 1, 4-5 n 5; 610 NW2d 242 (2000), this Court, discussing the cost approach to valuation, stated:
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> "In assessing value under the cost approach, an assessor begins with the cost to construct new and then deducts depreciation. The appraiser may begin with either reproduction cost, which is the cost of producing an exact duplicate of the property, or the replacement cost, which is the cost of replacing the utility provided by the subject property using a modern design that would be preferred by a typical user of the property. Replacement structures usually cost less than reproduction structures. *The Appraisal of Real Estate* (11th ed), p 371. The

> difference between reproduction cost and replacement cost is referred to as 'excess construction cost' and is one type of functional obsolescence. This Court has recognized that the use of the replacement cost approach eliminates some but not necessarily all forms of functional obsolescence that may exist." [*Wayne Co*, 261 Mich App at 208-209.]

The MTT did not misapply the law or adopt a wrong principle in employing the cost-less-depreciation method of valuation. "It is the [MTT's] duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case." *Meadowlanes*, 437 Mich at 485. The cost-less-depreciation method is a valid market-based tool to assess property values. See *Wayne Co*, 261 Mich App at 208-209; *Jones & McLaughlin Steel Corp*, 193 Mich App at 353. It is not an invalid method simply because the property did not assess at Landon's purchase price. In fact, as provided by MCL 211.27(5), "the purchase price paid in a transfer of property is not the presumptive [TCV] of the property transferred."

But the MTT did err in calculating the property's 2007 TCV at $39,400. The Township conceded before the MTT that the 2007 TCV should have been adjusted to $35,000. We therefore vacate that portion of the MTT judgment and remand for entry of an order consistent with this opinion.

Although we may not have reached the same valuation judgment in regard to the 2008 and 2009 TCVs, we are bound to affirm the MTT's factual findings as they are supported by competent, material, and substantial record evidence. As noted, Landon bears the burden of establishing the value of the real property. Landon did not challenge the replacement or reproduction cost of the residence under the cost-less-depreciation method. Rather, he challenged the Township's and MTT's assessment of depreciation, claiming that the value lost due to the general decay of the neighborhood and the condition of the house is greater than officially calculated.

According to a January 3, 2008 "Real Estate Summary Sheet," 1096 N. Cornell was constructed in 1955 and was in 30 "% Good (Physical)" condition. Landon presented into evidence an undated recorded tour of the house, showing that approximately two-thirds of the siding had been removed, the foundation was cracked, windows were broken and their frames bent, some floors were bare plywood, and there was water damage throughout. The garage abutting the home lacked a door and the structure sagged. Yet, the MTT viewed this recording and was able to judge for itself the level of depreciation to the property. "The weight to be accorded to the evidence is within the [MTT's] discretion," *Great Lakes Div*, 227 Mich App at 404, and we have no ground to second-guess its judgment.

Further, the MTT viewed the evidence presented by Landon and the Township regarding local home sales. Landon presented comparable properties sold after public and private foreclosures. He did not attempt to establish, however, that such forced sales had "become a common method of acquisition" in the area as required by MCL 211.27(1). Accordingly, those sales could not be considered as evidence of the subject property's value. As Landon did not meet his burden of proof, the MTT was within its power to simply affirm the Township's tax assessment for 2008 and 2009.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Elizabeth L. Gleicher